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EXAMINER	
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ART UNIT	PAPER NUMBER
3622	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/620,494	LUU, DUC THONG	
	Examiner	Art Unit	
	NATHAN C. UBER	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 September 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8,10-12 and 14-39* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,10-12 and 14-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. This action is in reply to the RCE filed on 16 September 2009.

2. Claims 1 and 23 have been amended.

3. Claims 9 and 13 have been previously canceled.

4. Claims 1-8, 10-12 and 14-39 are currently pending and have been examined.

Continued Examination Under 37 CFR 1.114

5. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 September 2009 has been entered.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-8, 10-12 and 14-39 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Examiner reconsidered this rejection in light of Applicant's response (see page 9 of Applicant's remarks). Applicant's response broadly directing Examiner's attention to ¶0016, ¶¶0038-0062 and ¶¶0126-0149 of the specification did not sufficiently indicate where in the specification this indefinite claim language is supported. Examiner found no clear definitions of the following limitations in the cited paragraphs. These rejections are maintained in the present office action with respect to the claim terms listed below. For the purposes of this examination

Examiner assumes that Applicant accepts Examiner's interpretation of the indefinite claim language cited in the previous office action and repeated below.

- Line = parameter that distinguishes aspects of an ad campaign such as a demographic or media venue (tv vs. internet)
- Web property = a web site (collection of web pages, see ¶0031 of the specification)
- Booked amount = price

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 1-4, 6-8, 10-12, 14-16, 18-27 and 29-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Sesto (U.S. 6,985,882) in view of Hennessey (U.S. 2003/0050827).

Claims 1, 23, 33, 37 and 39:

Del Sesto, as shown, discloses the following limitations:

- *specifying a target Gross Rating Point (GRP) for one or more lines of an Internet advertising campaign* (see at least Figure 4J, market goal GRP),

- *specifying a total booked amount for the lines* (see at least Figure 4J, total budjet),

Although Del Sesto does disclose a display and tracking feature of advertisements over time (see at least figure 4J, "GRP per day part"), Del Sesto does not specifically disclose the apportionment/dividing of the target GRP by time of day as in the limitations below. However, Hennessey, as shown, does:

- *apportioning, via a computer device, the target GRP among one or more time periods of the Internet advertising campaign* (see at least Figure 6, the GRP is divided by day parts),
- *apportioning, via a computer device, the total booked amount among the time periods* (see at least Figure 7, the budget is divided by day parts),
- *wherein recognized revenue is based on the apportioned target GRP and the apportioned total booked amount* (see at least Figure 11),
- *visibly display[ing] the recognized revenue on a user interface on a display of the computer device* (see at least Figure 7),

The primary difference between Del Sesto and Hennessey is that Del Sesto contemplates a prepaid contract and focuses on tracking advertising actually distributed and making good on the contract eventually, while Hennessey has a more "real-time" focus so that it can use data to more accurately predict advertising revenue and set more competitive advertising prices. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the two features above in the context of an "after-the-fact" invoicing plan because the tracking features of Del Sesto combined with the time display format of Hennessey reflect the actual performance and value of the service provider in distributing the advertisement over the defined period of time enabling the advertiser to pay only for the services received and retain its remaining advertising budget until the service provider later makes good on the contract. Further the combination of the teachings is obvious since the claimed invention

is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claims 2, 25 and 34:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejection above. Although Del Sesto does disclose a display and tracking feature of advertisements over time, Del Sesto does not specifically disclose the apportionment of the target GRP as in the limitation below. However, Hennessey, as shown, does:

- *the target GRP is apportioned equally among the time periods* (see at least Figure 7 and ¶0027).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the two features above in the context of an "after-the-fact" invoicing plan because the tracking features of Del Sesto combined with the time display format of Hennessey reflect the actual performance and value of the service provider in distributing the advertisement over the defined period of time enabling the advertiser to pay only for the services received and retain its remaining advertising budget until the service provider later makes good on the contract.

Claims 3, 26 and 35:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Although Del Sesto does disclose a display and tracking feature of advertisements over time, Del Sesto does not specifically disclose the apportionment of the target GRP as in the limitation below. However, Hennessey, as shown, does:

- *the booked amount is apportioned equally among the time periods* (see at least Figure 7 and ¶0027).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the two features above in the context of an "after-the-fact" invoicing plan because the tracking features of Del Sesto combined with the time display

format of Hennessey reflect the actual performance and value of the service provider in distributing the advertisement over the defined period of time enabling the advertiser to pay only for the services received and retain its remaining advertising budget until the service provider later makes good on the contract.

Claims 4, 24, 36 and 38:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Del Sesto, as shown, discloses the following limitations:

- *determining an actual GRP achieved for the time periods* (see at least Figure 4J),
- *determining recognized revenue for the time periods such that a ratio of the recognized revenue to the total booked amount is based on a ratio of the actual GRP to the target GRP* (see at least Figure 4J).

Claims 6 and 27:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Del Sesto, as shown, discloses the following limitation:

- *the ratio of recognized revenue to the total booked amount equals the ratio of the actual GRP to the target GRP for the lines* (see at least Figure 4J).

Claims 7 and 30:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Although Del Sesto does disclose a display and tracking feature of advertisements over time, Del Sesto does not specifically disclose the apportionment of the revenue as in the limitation below. However, Hennessey, as shown, does:

- *the ratio of recognized revenue for a particular time period to the total booked amount for a particular line is equal to the ratio of actual GRP to the target GRP for a particular line* (see at least Figure 11).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the two features above in the context of an "after-the-fact"

invoicing plan because the tracking features of Del Sesto combined with the time display format of Hennessey reflect the actual performance and value of the service provider in distributing the advertisement over the defined period of time enabling the advertiser to pay only for the services received and retain its remaining advertising budget until the service provider later makes good on the contract.

Claims 8, 29 and 31:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Del Sesto does not disclose:

- *determining an invoice amount for a billing period*
- *the invoice amount being calculated by adding recognized revenue for the lines for the time periods falling within the billing period*

However, the Examiner takes **Official Notice** that it is old and well-known in the art to bill advertisers by invoice for services rendered over an established period of time. Furthermore, the Examiner takes **Official Notice** that it is old and well-known that invoice amounts typically represent a sum of the cost of services rendered over the period of time the invoice contemplates.

Ergo, it would have been obvious to one having ordinary skill in the art at the time of the invention to total the *recognized revenue* (which Del Sesto does disclose as shown above) within a prescribed period to determine an invoice amount because this is the only means available within the art (referring to the combination of Del Sesto/Hennessey) to value the service of distributing advertisements in terms of dollars and both the service provider and the advertiser are interested in paying and receiving payment for the value of services rendered.

Claims 10 and 32:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Del Sesto does not disclose the limitation below:

- *adding revenue for a particular time period that falls partially within the billing period based on an amount of time that a particular time period falls within the billing period* (examiner takes official notice that Applicant has described prorating charges for services that may overlap billing cycles, and that such a method is known in the art).

It would have been obvious to one having ordinary skill in the art at the time of the invention to add the commonly known capability of prorating invoices to the methods contemplated by Del Sesto/Hennessy shown above because adding this feature enables the advertiser to see the effectiveness of their advertisements not only over conventional time periods (like weeks or months or days or day parts) but also in a completely customized time period (any arbitrarily defined billing period) which may be beneficial to one or the other for accounting purposes for example.

Claims 11 and 12:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Del Sesto does not limit time periods to weeks or months, however Del Sesto does contemplate analysis over various time periods, as shown:

- *the time period is a week* (see at least Figure 4L, flight dates),

With regard to the limitation of *wherein the billing period is a month* (Del Sesto does not define billing periods, the examiner takes **Official Notice** that it is old and well-known that a billing period may be a calendar month and in fact a calendar month is a conventional time period to use to define billing cycles. It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the weekly analysis capabilities of the Del Sesto invention with monthly billing cycles because monthly billing cycles are very common in the art and are therefore very accommodating for accounting purposes.

Claim 14:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Del Sesto does not disclose the limitation below:

- *capping the invoice amount for a line to an amount for the line for the billing period,*

Examiner takes official notice that in many service contracts, invoices are capped at a prescribed amount. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to ensure that any invoicing system is capable of working with in such a parameter if necessary.

Claim 15:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Del Sesto, as shown, discloses the following limitation:

- *when a total actual GRP for a billing period for a particular line differs from a total target GRP for the particular line for the billing period, applying the difference between the total actual GRP and the total target GRP for the billing period to a subsequent billing period* (see at least Figure 4J).

Claim 16:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Del Sesto, as shown, discloses the following limitation:

- *when the total actual GRP for the billing period for a particular line is less than the total target GRP for the particular line for the billing period, applying the difference between the total actual GRP and the total target GRP to a subsequent billing period* (see at least Figure 4J).

Claim 18:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Del Sesto discloses the following limitation:

- *each of the lines has an associated target GRP* (see at least Figure 4J).

Claim 19:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Del Sesto, as shown, discloses the following limitation:

- *any difference between an actual weekly GRP and a target weekly GRP is automatically carried over to the subsequent week, if a subsequent week is within a same calendar month* (see at least Figure 4J).

Claim 20:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Del Sesto, as shown, discloses the following limitation:

- *the difference is calculated for each of the lines of the Internet advertising campaign* (see at least Figure 4J).

Claim 21:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Del Sesto, as shown, discloses the following limitation:

- *recognized revenue is separately calculated for each of the lines* (see at least Figure 4J).

Claim 22:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Del Sesto, as shown, discloses the following limitation:

- *the billing period of each of the lines is independent of other lines* (see at least Figure 4B).

11. Claims 5, 17, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Sesto/Hennessey and further in view of Alvarez et al. (U.S. 6,772,129).

Claims 5 and 28:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Del Sesto does not disclose the following limitation as Del Sesto is focused on media distribution in television and radio formats. However, Alvarez, as shown, does disclose the following limitation:

- *serving advertisements on one or more Web pages in accordance with campaign parameters* (see at least the Abstract, "[t]his method measures all known forms of media… such as internet banners and email...").

The Alvarez invention is focuses only on measuring the effectiveness and efficiency of advertising and as such it contemplates a wider array of media. Among the various variables Alvarez uses to establish the effectiveness of an advertisement, Alvarez also relies on a comparison target GRPs and actual GRPs. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the wider media capabilities of Alvarez with the more robust contract/billing monitoring capabilities of Del Sesto because this combination can bring all of the benefits of the Del Sesto invention to campaigns that span the full range of advertising venues.

Claim 17:

The combination of Del Sesto/Hennessey discloses the limitations as shown in the rejections above. Del Sesto does not disclose the following limitation, however Alvarez, as shown, does:

- *each of the lines is related to an individual Web property* (see at least the Abstract, "[t]his method measures all known forms of media… such as internet banners and email...").

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the wider media capabilities of Alvarez with the more robust contract/billing monitoring capabilities of Del Sesto because this combination can bring all of the benefits of the Del Sesto invention to campaigns that span the full range of advertising venues.

Response to Arguments

12. Applicant's arguments filed 16 September 2009 have been fully considered but they are not persuasive.

13. Applicant argues that the budget taught by Del Sesto fails to teach Applicant's claimed *total booked amount* because Applicant alleges that the *total booked amount* is defined as the "total amount of money that has been booked for one or more lines of an adverting campaign" and is not an estimate of expected income and expense for a given period in the future (i.e. a budget) (see page 10 of Applicant's remarks). Applicant's argument is flawed in two respects. Applicant's argument (1) relies on a circular definition of *total booked amount* (circular because it includes the term *booked*) that is not supported by the original disclosure; and Applicant's argument (2) assumes a single narrow definition of "budget" and relies on this definition to advocate the inapplicability of the entire Del Sesto reference, when in fact Applicant's narrow interpretation of "budget" is neither supported by the Del Sesto reference, nor generally by those of ordinary skill in the art. With regard to Applicant's first argument, Examiner has maintained throughout the prosecution of this application that the limitation *booked amount* is indefinite. Applicant continues to maintain this language and here attempts to rely on Attorney argument to assign meaning/definition to this indefinite claim language. The MPEP is clear on this matter:

> Attorney argument is not evidence unless it is an admission, in which case, an examiner may use the admission in making a rejection. See MPEP § 2129 and § 2144.03 for a discussion of admissions as prior art. The arguments of counsel cannot take the place of evidence in the record. *In re. Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); *In re. Geisler*, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997) ("An assertion of what seems to follow from common experience is just attorney argument and not the kind of factual evidence that is required to rebut a prima facie case of obviousness."). See MPEP § 716.01(c) for examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration. MPEP 2145(II).

Examiner's as yet unchallenged interpretation of the indefinite claim language is maintained. Further with regard to Applicant's second argument, Examiner's in interpretation of the Del Sesto budget is maintained. The budget taught by Del Sesto does not fail to disclose specifying a "total price/booked amount" as claimed.

14. Applicant's remaining arguments focus on perceived deficiencies of the Hennessey reference. Examiner has reviewed Applicant's assertions carefully and respectfully disagrees with

Applicant's interpretation of Hennessey and therefore maintains the previous rejection. Applicant presents 4 arguments and each will be addressed in the order they appear in Applicant's remarks.

15. Applicant "disagrees that Hennessey discloses the apportioning of the target GRP claim element" because the cited figure in Hennessey displays "how many points [i.e. a 20% portion of the GRP in the exemplary row representing 'The Fish Shack Organic Foods' ad] per day part the advertiser has pending" (see page 11 of Applicant's remarks). Admittedly Examiner does not understand Applicant's argument. The claims merely require apportioning the GRP among one or more time periods of the advertising campaign. This is clearly demonstrated by the cited figure and the supporting explanation of the cited figure on which Applicant relies in Applicant's argument. Applicant does not offer any explanation for why Applicant disagrees with Examiner's interpretation of the claim language and the cited reference. Accordingly, Examiner maintains the previous rejection; Applicant's argument is not persuasive.

16. Applicant next "submits that Hennessey's budget is not a 'total booked amount' as claimed" (see page 11 of Applicant's remarks). Here Applicant continues to attack the Hennessey reference in a piecewise fashion, instead of in combination, as intended by the Examiner and as shown above in the rejections under 35 USC § 103(a). In response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The cited figure discloses an exemplary budget for 'The Fish Shack Organic Foods' ads divided/apportioned by day part as claimed. Applicant's argument appears to rely on Applicant's insistence that the Examiner is somehow misinterpreting the meaning of "total booked amount," although as noted above with respect to Applicant's arguments against the Del Sesto reference, Applicant has repeatedly failed to demonstrate a clear definition for this limitation. In any case, Examiner clearly indicated in the rejection that Del Sesto teaches the "total booked amount" limitation, and Hennessey is only relied on to demonstrate the 'apportioning' limitation. Here

Hennessey unambiguously teaches apportioning an advertising budget based on the apportioned GRP as claimed. The combination of references teaches the claimed limitation. Examiner maintains the previous rejection; Applicant's argument is not persuasive.

17. Applicant argues that figure 11 of Hennessey "does not disclose recognized revenue being based on an apportioned target GRP and an apportioned total booked amount" (see page 11 of Applicant's remarks). In fact figure 11 presents a column labeled 'Actual 110% SO CPP' which presents by day-part the actual revenue per gross rating point (see also Hennessey ¶0115, explaining the columns of Figure 1). Applicant looks only to the column labeled '% revenue contribution,' then summarily dismissed the full teaching of the cited figure. Applicant's argument is not persuasive, Examiner maintains the previous rejection.

18. Applicant argues that Hennessey fails to disclose 'visibly displaying the recognized revenue on a user interface on a display of a computer' because the cited figure, figure 7, discloses a budget but does not disclose a recognized revenue (see page 11 of Applicant's remarks). Examiner admits that this aspect of the rejection may be a bit confusing, but nevertheless maintains the rejection and offers an explanation of Examiner's interpretation of the claim limitation and its applicability to the cited reference. Examiner relies on figure 11 to teach the "recognized revenue" limitation of the claim as noted in the rejection. Examiner interpreted the limitation in question as only additionally limiting the claim by requiring the presentation of data on an interface on a computer. Therefore Examiner directed Applicant's attention to figure 7 which teaches displaying data on a computer interface (figure 7 is a screen shot of a computer interface). Examiner may as well have additionally or alternatively directed Applicant's attention to figure 11. The limitation only positively recites displaying data on a computer interface; the content of the displayed data in this limitation does not affect the scope of the limitation. And, as clearly noted in the previous limitation in which the same data carries patentable weight, the Hennessey reference nevertheless discloses the limitation. Applicant's observation that Examiner relied on a different figure for this limitation was intended to demonstrate that the 'recognized revenue' aspect of this

particular limitation does not carry patentable weight. The rejection is maintained, Applicant's argument is not persuasive.

19. Examiner reminds Applicant that Hennessy was relied upon in the combination with Del Sesto to disclose the "apportionment/division" limitation because Del Sesto discloses the "target GRP" and "total booked amount" limitations. Del Sesto also discloses varying GRP based on time (see Figure 4J, GRP per day part). Hennessey demonstrates that one having ordinary skill in the art at the time of the invention would have known to (and could have) apportioned/divided the target GRP and booked amount of Del Sesto in the same manner that Hennessey apportioned GRP (figure 6) and an advertising budget (figure 7). Further figure 11 of Hennessey was relied upon to teach "recognized revenue" because figure 11 displays actual revenue figures (calculated with actual GRP) alongside projected/target figures based on projected/target GRP. The "recognized revenue" of the claim is the difference between the actual and the projected. This value is clearly demonstrated by Hennessey in figure 11. Figure 11 and at least ¶0097 demonstrate the "recognized revenue" of the claims; the purpose of this information in the reference is incidental to the teaching. The Hennessey teachings are appropriately relied upon to demonstrate that one having ordinary skill in the art at the time of the invention would have known to divide target GRP and target ad budgets over time as taught by Hennessey. Therefore one practicing the Del Sesto invention could have applied Hennessey's teachings to the Del Sesto invention since the Hennessey elements in the combination would have performed the same function as they did separately and the result of the combination of the elements would have been predictable. Here the combination is merely preparing and displaying the data of Del Sesto in a manner taught by Hennessey.

20. Applicant continues to argues that "[t]he Office Action states that Del Sesto does not disclose [several] claim elements" of the independent claim (see page 10 of Applicant's remarks). This statement is in fact false. This is not the first time Applicant has mischaracterized Examiner's 103 rejections in this regard. The previous Office action clearly asserts that Del Sesto does not *specifically* disclose the *apportioning* limitations and therefore Examiner relies on the teachings of

Hennessey for the *apportioning* limitations. The combination of references teaches *apportioning GRP*. Examiner clearly explained that the combination of references teaches the limitations in the independent claims above, and that Del Sesto does not specifically disclose *apportioning*, therefore the Hennessey reference is relied on to teach the dependent claims in question. Examiner did not state that Del Sesto does not teach the subject matter of claim 1. Examiner clearly states the opposite.

21. Applicant's arguments stating that the combination of the prior art of record does not fully disclose nor fairly suggest the claimed invention fails to persuade the Examiner because, as shown in the rejections and arguments above, the prior art of record is clearly and unarguably analogous as well as relevant. In addition, Applicant's arguments regarding the teachings of the prior art of record fall short because when combined together, the prior art of record wholly and flawlessly discloses the claimed invention. Applicant's argument's regarding alleged concessions by Examiner are false and fail to persuade Examiner that Examiner's position with respect to the prior art of record is different from that which Examiner has clearly expressed in Examiner's rejections of the claims above. Applicant should carefully consider revising the claim language to overcome the pending rejections which may place the application in a better condition for allowance.

Conclusion

22. This is a request for continued examination. Applicant's claim amendments did not change the scope or interpretation of the claims. Applicant merely replaced the word 'being' in claim 1 with 'is' and changed the conjugation of the verb 'displaying' in claim 23 to 'display.' All claims are drawn to the same invention previously claimed and could have been finally rejected on the same grounds and art of record in the Office action if they had been entered in the earlier amendment. Applicant presented several arguments which are addressed above and were not persuasive for the reasons noted above. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

23. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

24. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Nathan C Uber** whose telephone number is **571.270.3923.** The Examiner can normally be reached on Monday-Friday, 8:30am-4:00pm EST. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Eric Stamber** can be reached at **571.272.6724**.

25. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://portal.uspto.gov/external/portal/pair <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

26. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

P.O. Box 1450, Alexandria, VA 22313-1450

or faxed to **571-273-8300**.

27. Hand delivered responses should be brought to the **United States Patent and Trademark Office Customer Service Window**:

Randolph Building

401 Dulany Street

Alexandria, VA 22314.

/Nathan C Uber/ Examiner, Art Unit 3622
7 November 2009

/Arthur Duran/
Primary Examiner, Art Unit 3622